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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas
Secretary
Federal Communication Commission
445 12th Street, SW, Room TWB-A325
Washington, DC 20554


RE: In the Matter of Petition of Pacific Bell and Nevada Bell for Additional Waivers, CC Docket No. 96-98 and NSD File No. L-98-121.

Dear Ms. Roman Salas:

Enclosed herewith for filing are the original and four (4) copies of MCI Worldcom's Opposition to the above referenced petition.

Please acknowledge receipt by affixing an appropriate notation on the copy of the MCI WorldCom Opposition furnished for such purpose and remit same to the bearer.

Sincerely,


Mary De Luca

Enclosure

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

In the Matter of)
)
Implementation of the Local Competition)
Provisions of the Telecommunications Act)
of 1996)
)

CC Docket No. 96-98

Petition of Pacific Bell and Nevada Bell)
for Additional Waivers)
)

NSD File No. L-98-121

Petition of Southwestern Bell Telephone)
Company, Pacific Bell, and Nevada Bell)
for Expedited Declaratory Ruling on)
Interstate IntraLATA Toll Dialing or, in)
the Alternative, Various Other Relief)

**Opposition of MCI WorldCom, Inc.
to Petition of Pacific Bell and Nevada Bell for Additional Waivers**

MCI WorldCom, Inc. ("MCI WorldCom") hereby submits these comments in response to the request of Pacific Bell and Nevada Bell ("SBC")¹ for an additional extension of time beyond the May 7, 1999 intraLATA dialing parity implementation date set forth in the Commission's March 23, 1999 Dialing Parity Order.² Because SBC has failed to demonstrate good cause for its over-broad request, MCI WorldCom respectfully urges the Commission to deny the waiver request and order SBC to implement intraLATA dialing parity in both California and Nevada by May 7, 1999.

¹ See *Common Carrier Bureau Seeks Comment on Pacific Bell and Nevada Bell's Request for Waiver, of the Implementation Date until June 15, 1999 for IntraLATA Toll Dialing Parity*, Public Notice, DA-99-681 (rel. April 8, 1999).

² *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Petition of Southwestern Bell Telephone Company, Pacific Bell, and Nevada Bell for Expedited Declaratory Ruling on Interstate IntraLATA Toll Dialing Parity or, in the Alternative, Various Other Relief*, Order, CC Docket No. 96-98, NSD File No. L-98-121, FCC 99-54 (released March 23, 1999) ("the March Order").

Background

In September 1998, SBC asked the Commission to declare that there is “no current obligation” for implementation of interstate intraLATA dialing parity in light of the Eighth Circuit’s decision in *California v. FCC*, 124 F.3d 934 (8th Cir. 1997).³ In the alternative, SBC requested that the Commission waive or suspend the deadline for interstate intraLATA dialing parity, based on its allegation that “confusion” could result from the implementation of pre-subscription for only some of a subscriber’s intraLATA toll calls in some areas, *i.e.*, the interstate portion of intraLATA traffic. Nevertheless, at the time, SBC represented that its networks were “already prepared ... to provide full 2-PIC intraLATA presubscription.”

In January 1999, the Supreme Court overturned the Eighth Circuit’s 1997 ruling and reinstated the federal rules requiring intrastate and interstate intraLATA dialing parity.⁴ Under the Commission’s rules established in 1996, SBC was required to implement intraLATA dialing party by February 8, 1999.⁵ The Commission’s March 23, 1999 dialing parity order did not change its previously adopted rules except to allow those states that had not already done so more time to review and approve intrastate implementation plans required by the FCC’s rules. Specifically, the *March Order* required LECs with already approved implementation plans to implement intraLATA dialing parity by May 7, 1999, and any LECs without plans on file, to file a plan with their state commissions by April 22, 1999. State commissions then have up to 60 days to approve the implementation plan, which the LEC

³ *Petition of Southwestern Bell Telephone Company, Pacific Bell, and Nevada Bell for Expedited Declaratory Ruling on Interstate IntraLATA Toll Dialing Parity or, in the Alternative, Various Other Relief*, Order, CC Docket No. 96-98, NSD File No. L-98-121 (filed Sept. 18, 1998) (“SBC September 1998 Petition”).

⁴ *AT&T Corp. v. Iowa Utilities Board*, 1999 WL 24568 (U.S.), decided January 25, 1999 (“Supreme Court decision”).

⁵ 47 CFR § 51.211(a).

must then implement within 30 days thereafter.⁶ Under these revised deadlines, states are permitted and encouraged to order LECs to implement sooner, but not later, than either May 7, 1999 (where a plan is already approved) or within 30 days after June 22, 1999 (if a plan is filed by April 22, 1999).

SBC's Petition for Waivers

As stated above, SBC's networks were fully capable of providing dialing parity last year. In its Petition, SBC states that beginning October 15, 1998, it began to take steps it deemed appropriate to implement interstate intraLATA toll dialing parity only in California LATA 730⁷ and two LATAs in Nevada. This involved **disabling** its switches to preclude the company from providing intrastate intraLATA dialing parity in those areas. SBC acknowledges that it did not make these network changes in the rest of the LATAs in California since it does not provide interstate intraLATA service in those areas.⁸ SBC claims it chose this course because the Commission had not yet ruled on its petition for a declaratory ruling or other relief that had been pending only since mid-September.⁹ With regard to LATA 730, SBC claims that by February 8, 1999, 93% of its switches in LATA 730 were capable of providing interstate intraLATA dialing parity.¹⁰ More specifically, SBC states that it has 152

⁶ The *March Order* also provides for default procedures by the FCC should a State Commission not meet these deadlines.

⁷ LATA 730 is the Los Angeles LATA and the only California LATA that has interstate intraLATA toll calling. SBC represents that this serving area encompasses 8,000 customer lines in Arizona; the remaining 6,500,000 customers in the LATA are all California residents. SBC September 1998 Petition at 8. The other ten California LATAs do not have interstate intraLATA toll calling.

⁸ Petition, Declaration of Nancy R. Forst, at 3.

⁹ Petition at 3.

¹⁰ Petition, Declaration of Violeta Diaz, at 3.

switches in LATA 730, and that work on all but three of its 5ESS switches had been completed by February 8, 1999.¹¹

The thrust of Pacific's petition is that, because of its voluntary decision in the fall of 1998 to disable some of its switches to render them incapable of providing intrastate intraLATA dialing parity, it will require additional time beyond May 7, 1998, in order to undo these system changes. On this premise, it requests a blanket statewide waiver of its obligation to provide intraLATA dialing parity because of its claimed inability to timely reprogram only a handful of switches in LATA 730.

Discussion

For the reasons stated below, and for petitioner's failure to show good cause for additional delay, the Commission must deny SBC's request for waiver. The Commission should not allow SBC to continue to hold the people of California and Nevada hostage to its monopolist's tactics by further delaying intraLATA toll competition in those states.

Despite SBC's acknowledgment that 149 of the switches in the Los Angeles LATA were capable of providing interstate intraLATA dialing parity on February 8, it is MCI WorldCom's understanding that SBC has failed to provide this capability, in clear violation of the Commission's longstanding interstate dialing parity rules. The Commission should not reward the carrier by prolonging the period of its noncompliance. Further, SBC has not alleged -- let alone proven -- that any of its switches in the remaining 10 California LATAs are incapable of providing intrastate intraLATA dialing parity today, let alone by the Commission's May 7 deadline. On the contrary, of the 430 switches it has statewide, SBC alleges that it only made modifications to those located in LATA 730 to accommodate its own anticompetitive goal of restricting dialing parity to the very

¹¹ Petition, Declaration of Violeta Diaz, at 3, 5-6. Notably, all work on two other switch types, DMS100 and 1AESS, was complete by February 8, as was work on 55 of Pacific's 58 5ESS switches.

limited interstate intraLATA calling area on the California-Arizona border.¹² Thus, even if the Commission were to accept SBC's representations with respect to programming difficulties associated with 5ESS switches, that would provide no basis for approving a blanket waiver of the May 7 implementation deadline in other switches or in the rest of the state.

SBC Cannot Be Allowed to Continue To Delay Competition.

SBC attempts to move the target date for implementation, based on its extravagant claims that it cannot implement intraLATA dialing parity by the Commission-established deadline. The Commission should not reward SBC's disingenuous arguments and continued fierce resistance to this pro-consumer policy by granting its request. In its September 1998 petition, SBC claimed that, unless it were required to implement dialing parity simultaneously for both interstate and intrastate intraLATA calling, it would unilaterally make certain system changes in order to provide dialing parity only for interstate calls by the existing February 8, 1999 deadline. Based on its claims that it would be difficult to segregate the implementation of interstate and intrastate toll dialing parity, SBC actually asked the Commission to allow SBC to delay implementation of the interstate portion until it was required to implement dialing parity for intrastate calling as well.

Now, SBC states that as of February 8, 1999, it was ready to implement interstate intraLATA dialing parity in 93% of its switches in LATA 730, or in all but three of its 430 switches in California. SBC should already have implemented interstate intraLATA dialing

¹² *Id.*, Declaration of Violeta Diaz at 3 (noting that "approximately 430 Pacific Bell switches in California were preconditioned for full PIC2 capability"), and Declaration of Nancy R. Forst, at 3 (explaining that "The LATAs in California that did not have interstate-intraLATA territories were excluded" from the system modifications made beginning in the fall of 1998).

parity on February 8, 1999, since it was substantially ready to comply and had an outstanding legal obligation to do so.

Indeed, for this reason, SBC should have withdrawn its September 1998 petition as moot (or at least amended it for California) because it was then substantially capable of meeting the existing federal requirements. Of course, SBC did not notify the Commission that the basis for its petition had changed. This pattern of inconsistent and misleading advocacy does not provide any confidence that SBC's current claims about its readiness or its ability to become ready are accurate. The Commission should simply dismiss SBC's pleading, or deny it for failure to demonstrate good cause.

With regard to intrastate intraLATA dialing parity, SBC admits that it made no switch modifications in California other than in LATA 730. It has some 278 switches in the other 10 LATAs in the state. In its September 1998 Petition, SBC acknowledged that its network was "already prepared ... to provide full 2-PIC intraLATA presubscription." In the instant petition, SBC does not present any rationale or facts to support its refusal to implement intraLATA dialing parity in those switches, which admittedly are fully capable now, and in those areas of the state, by May 7th, as required by the Commission's rules. For that reason alone, its request for waiver should be denied.

Further Delay Harms Consumers

The *March Order* clearly outlined the Commission's requirements for a fair and timely implementation of intraLATA toll dialing parity in light of the Supreme Court decision. The *March Order* sets forth a revised schedule that gives the states sufficient time to review implementation plans (where necessary) or, as is the case in California and Nevada, permitted the LECs adequate time to implement plans which state commissions had already approved. In fact, the Commission stated, and correctly so, that a LEC is required to implement intraLATA dialing parity in states where the plan has already been approved regardless of whether or not the state commission ordered the LEC to do so.¹³

As a result, MCI WorldCom has advanced our business plans in reliance on these dates and the regularity of commission decision-making, and has developed marketing efforts to attract tens of thousands of California residents anxious to exercise their choice in intraLATA toll calling. We have estimated that California consumers potentially can save \$160 million or more annually with the lower rates promised by effective intraLATA toll competition. If the Commission grants SBC's waiver, consumers will be denied the earliest opportunity to exercise choice in telecommunications providers. In addition, delay will cause confusion because those customers expecting new lower rates beginning May 7, 1999, will still be paying the higher rates of the incumbent.

If the Commission accepts SBC's claims concerning technical difficulties and chooses to allow SBC to delay its implementation beyond May 7, 1999, the Commission must do so on an extremely limited basis. First, there is no basis to tolerate any further delays in the

¹³ *March Order* at para. 7.

implementation of interstate intraLATA dialing parity. Second, the Commission must not delay implementation of intraLATA dialing parity in other California LATAs.

SBC claims that only 152 switches are involved in its so-called reprogramming effort, and all are in LATA 730. Of these, SBC acknowledges that the translation work will be completed in all 1AESS and DMS 100 switches (or 96 of the total switches) by May 7.¹⁴ Under these circumstances, the Commission must require SBC to implement intraLATA dialing parity on May 7, 1999 in all California and Nevada LATAs, with the possible exception of LATA 730. Even then, a waiver within LATA 730 – if appropriate at all – should be limited only to those few 5ESS switches that are not fully capable by May 7. SBC provides no reasoned basis why it should be permitted a blanket, statewide waiver as requested in its petition.¹⁵

The Commission should not accept at face value SBC's claim about the time and resources needed to "undo" SBC's last deliberate system modifications and make its networks again fully 2-PIC capable. No other LEC has provided any indication that such a massive effort is required. In fact, other LECs have implemented dialing parity virtually overnight, including SBC in Kansas.¹⁶

Even if the Commission satisfies itself that SBC is making a good-faith effort to implement intraLATA toll dialing parity in the few remaining switches as quickly as possible,

¹⁴ Petition, Declaration of Violeta Diaz, at 6. SBC does not indicate how many of its 58 5ESS switches will be completed by May 7, but it is fair to presume that translations will be completed in a substantial number of the switches by that time, since SBC commenced work back in March.

¹⁵ There should be no concern that customer confusion would result from this manner of implementation. Consumers in San Francisco, for example, will not be impacted by any slight delay in implementation in some Los Angeles LATA switches. Moreover, interexchange carriers will initially market to customers in those areas where intraLATA dialing parity is available.

¹⁶ ¹⁶ *In the Matter of the Petition of AT&T Communications of the Southwest, Inc. to Require SWBT to Implement IntraLATA Toll Presubscription No Later Than February 8, 1999*, Order, Docket No. 99-AT&T-216-MIS, before the Kansas Public Utility Commission (February 16, 1999)

it should allow a limited waiver for LATA 730 only on the condition that SBC file, with the Commission, a weekly report on the status of its implementation.

Finally, SBC should be required to certify before the Commission that it will not seek any additional delays from the California or Nevada commissions, or any court to delay intraLATA dialing parity beyond June 15, 1999. SBC acknowledges that “Pacific Bell and Nevada Bell previously filed State Plans on intraLATA toll dialing parity in California and Nevada.”¹⁷ At the same time, SBC has stated its intention to file by April 22 a “new” implementation plan in California.¹⁸ The Commission should understand this ploy for what it is – another effort to delay the pro-consumer benefits of intraLATA dialing parity. If SBC ignores its existing, approved plan, and files a new one, any state commission review could extend until June 22, which would negate the relevance of the June 15 date specified in the instant waiver petition, and the veracity of the representations on which it is based. The Commission should not tolerate these abusive tactics, and require SBC to make and live up to its lawful commitments.

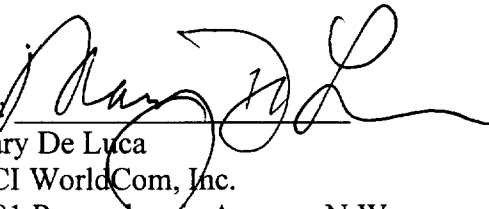
CONCLUSION

The Supreme Court decision reinstated the Commission’s 1996 dialing parity rules. In its *March Order*, the FCC extended its original February 8, 1999 deadline to May 7, 1999, in states where a LEC has an approved implementation plan. SBC’s request for a waiver and extension until June 15, 1999 to comply should not be granted because SBC has an approved plan in both California and Nevada and must not be rewarded for its continued effort to delay opening its intraLATA toll market to competition.

¹⁷ Petition at 2.

Respectfully submitted,

MCI WORDLCOM, INC.

By: 
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Dated: April 14, 1999

¹⁸ Petition at 2. This “new” plan is not a requirement of the California PUC.

CERTIFICATE OF SERVICE

I, Barbara Nowlin, do hereby certify that on this 13th day of April, 1999, copies of the foregoing Opposition of MCIWorldCom to the petition of Pacific Bell and Nevada Bell for additional waivers is served on each of the following persons:

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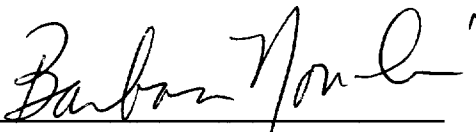
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